



Livingston Job Service Workforce Center

Employer Services

Frequently Asked Questions...

1. How often are breaks required to be given and how long must they be?

Neither the federal nor the state of Montana wage and hour laws require that breaks be provided. However, if rest breaks are provided, they are considered hours worked. Meal periods are also hours worked unless certain criteria are met: 1) completely relieved of duty and 2) at least 30 minutes in duration.

2. When are wages due if an employee quits, is laid off or is discharged?

Effective October 1, 1997, wages are not due to an employee who quits until the next payday for the period in which the employee was separated, or 15 days, whichever occurs first. If an employee is laid off or discharged, all wages are due immediately unless the employer has a pre-existing, written personnel policy that extends the time for payment up to the next pay day for the period in which the separation occurred, or 15 days, whichever occurs first. In the case of an employee discharged for allegations of theft connected to the employee's work, an employer may withhold the value of the theft provided: 1) the employee agrees in writing to the withholding, or 2) charges have been filed with law enforcement within seven days of separation. If no charges are filed with a court of competent jurisdiction within 15 days of the filing of the report with law enforcement, the wages are due within the 15-day period. If the employee is found not guilty of the charges or the employer withholds in excess of the value of the theft, the court may order the employer to pay the withheld amount plus interest.

3. Is it okay for an employer to require that all keys and uniforms be returned before paying employees their final paycheck?

No, you must still follow the law as explained in Answer #2.

4. Can I withhold payment of wages to offset charges made by the employee at my business?

Only if you have a signed agreement of this arrangement with the employee.

5. Can I require that employees come to my business to get their final paycheck?

You must pay through regular pay channels OR by mail if requested by the employee

6. Can I deduct from wages the amount of damages caused by an employee?

No, wages cannot be withheld for shortages, damages or mistakes.

7. Can I pay my employee less than minimum wage during a training period?

No, there is no training wage in Montana. Even if an employee signs an agreement to work for less than minimum wage, it is unenforceable because it is illegal.

8. I pay my hourly employees every 2 weeks so I just pay overtime for any hours worked over 80. Is this okay?

No, each week stands alone and cannot be averaged for minimum wage or overtime. A workweek is defined as a period of 168 hours during seven consecutive 24-hour periods.

9. I require my food servers to pool their tips and I disburse these tips among all my employees. Is this okay?

No, tips belong to the employees who provide the service and any tip pool agreements should be arranged only by the employees to whom the tips belong.

10. We have a tip container for patrons to leave tips at our espresso bar. We donate all tips collected to local charities. Is this okay?

Again, no. Tips belong to the employees and employers should not try to control them.

11. Is it necessary that I give a discharged employee a reason for discharge?

It is the duty of any person after having discharged any employee from service, upon demand by the discharged employee, to furnish the discharged employee in writing a statement of reasons for the discharge. Except as provided in subsection (3), if the person refuses to do so within a reasonable time after the demand, it is unlawful for the person to furnish any statement of the reasons for the discharge to any person or in any way to blacklist or to prevent the discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed...

12. Do I need to pay employees for staff meetings held in the evenings, which are not during my employees' regular hours of work?

All of the following criteria must be met in order for meetings and training not to be considered hours worked. Not work time if:

- i. attendance is outside of employee's regular working hours,
- ii. attendance is voluntary
- iii. not directly related to employee's job, AND
- iv. employee does not perform any productive work during attendance.

13. Can I require my employees to report to work and wait around to see if we are busy enough to need their services?

Time spent waiting is hours worked. You can pay different rates as long as these rates meet minimum wage requirements and do not conflict with other agreements.

14. Is it true that since I pay my employees on a salary basis, I don't need to be concerned about overtime?

Paying employees on a salary basis is only one of many methods of payment. You still must pay overtime for all hours worked over 40 in a workweek unless the employee specifically meets an exemption from the overtime provisions of Montana statutes. (For a list of exemptions request a Quick Reference Guide from the Missoula Job Service Workforce Center or the Wage & Hour Unit.)

15. Can I require my employees to report to their work stations 15 minutes before their shift begins?

Only if you pay them for it. Preparatory and concluding activities are hours worked.

16. I have a written policy that requires employees to get written permission before they are allowed to work any overtime; however, I have one employee who comes in early and stays late without approval. Must I pay him overtime?

Unless the employee is exempt from overtime, you must pay the employee overtime for all hours worked over 40 in a workweek. If an employee does not follow your established rules and policies, you should address these problems through disciplinary measures.

17. If an employee actually works 40 hours during the workweek and I also pay him 8 hours of holiday pay, do I need to pay time and a half for 8 of these hours?

No, wage and hour laws do not require that holiday pay, sick leave, or vacation hours be counted toward the 40 hours unless actually worked.

18. Can I hire 14 and 15-year-olds during the school year?

Yes, as long as the specific employment is not prohibited and you adhere to the allowed hours of work. See child labor laws for details.

19. Can I refuse to hire people who smoke?

You can implement smoking and nonsmoking policies during work hours; however, generally, discrimination is prohibited for the use of lawful products during nonworking hours.

20. Must I pay unused vacation pay to an employee who quits?

The wage and hour laws do not require that an employer provide vacation pay (private sector) but they do say if promised and earned, is due and payable. So whether or not vacation pay is due depends on your policies and how they are written and implemented.

21. Must I give severance pay to departing employees?

The wage and hour laws do not require severance pay.

22. Can I give compensatory time off to employees instead of paying them overtime?

The private sector cannot substitute compensatory time for overtime unless the employees are exempt from the overtime provisions of the law. Note: Use of comp time for Administrative, Executive or Professional employees may jeopardize exempt salary status.

Wage and Hour Laws Do Not Require

- Vacation pay (private sector) - if promised and earned, is due and payable
- Holiday or sick pay (private sector)
- Severance pay
- Rest breaks or meal periods
- Holidays off
- Pay raises or fringe benefits
- Time clocks to be used

The Department of Labor & Industry's Wage & Hour Unit has no jurisdiction over scheduling employees, disciplinary actions or termination.

Visit: <http://erd.dli.mt.gov/erdhome.asp> for more information.

Employee Records required to be kept:

- Name in full
- Social Security Number
- Home address
- Date of birth
- Time of day and day of week employee's workweek begins
- Regular hourly rate of pay and length of pay period
- Hours worked each work day and total hours worked each workweek
- Date of payment and pay period covered by payment
- Total daily or weekly straight time earnings or wages
- Total weekly overtime compensation
- Total additions to or deductions from wages
- Total wages paid each pay period

Records required for exempt employees differ from those for nonexempt workers. Also, special information is required on employees under uncommon pay arrangements or to whom board, lodging or other facilities are furnished.

Records of the required information must be preserved for 3 years.

Hours Worked are Defined as:

- **All times an employee is required to be on duty or on the employer's Premises or at a prescribed work place and all the time during which they are suffered or permitted to work for the employer.**
- **Meal periods unless the following criteria are met:**
 - 1) The employee is completely relieved of duty and...
 - 2) The meal period is at least 30 minutes in duration
- **Staff/business meetings and training.**

This would not be hours worked if all of the following apply:

 - 1) attendance is outside of employee's regular working hours;
 - 2) attendance is voluntary;
 - 3) meeting is not directly related to employee's job, and...
 - 4) the employee does not perform any productive work during attendance.
- **Sleeping time on a shift of less than 24-hours**
- **Preparatory and concluding activities**
- **Rest breaks**
- **Time spent waiting**
- **Travel time**